

UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

JOSHUA WILLIAM BACHARACH,

Case No. 3:22-cv-00122-ART-CSD

Petitioner,

ORDER

v.

WILLIAM REUBART, et al.,

Respondents.

Pro se Petitioner Joshua William Bacharach has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF No. 1-1 (“Petition”).) This matter comes before the court on initial review under the Rules Governing Section 2254 Cases (“Habeas Rules”) and for consideration of Bacharach’s motion for appointment of counsel. For the reasons discussed below, the court directs service of the Petition and grants Bacharach’s motion.

I. BACKGROUND

Bacharach challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County (“state court”). *State of Nevada v. Joshua Bacharach*, Case No. C-14-299425-1.¹ On January 8, 2016, the state court entered a judgment of conviction, pursuant to a jury trial, for attempted murder with the use of a deadly weapon, four counts of discharging a firearm from or

¹ The court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. The docket records may be accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 within a structure or vehicle, four counts of assault with a deadly weapon, stop
2 required on signal of police officer, resisting public officer with the use of a
3 firearm, possession of a firearm with an altered or obliterated serial number, and
4 three counts of possession of a firearm by an ex-felon. In total, Bacharach was
5 sentenced to 59.9 to 151 years in prison. Bacharach appealed, and the Nevada
6 Court of Appeals affirmed on October 19, 2016. Remittitur issued on November
7 15, 2016.

8 On November 8, 2017, Bacharach filed a state petition for writ of habeas
9 corpus. The state court denied post-conviction relief on May 5, 2021. Bacharach
10 filed a post-conviction appeal, and the Nevada Court of Appeals affirmed the
11 denial on February 3, 2022. Remittitur issued on February 28, 2022.

12 On March 6, 2022, Bacharach initiated this federal habeas corpus
13 proceeding.² (ECF No. 1-1.) The court instructed Bacharach to resolve the filing
14 fee, and he timely complied. (ECF Nos. 3, 5.)

15 **II. DISCUSSION**

16 Habeas Rule 4 requires the assigned judge to examine the habeas petition
17 and order a response unless it “plainly appears” that the petition is not entitled
18 to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule
19 allows courts to screen and dismiss petitions that are patently frivolous, vague,
20 conclusory, palpably incredible, false, or plagued by procedural defects. *Boyd v.*
21 *Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d
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23 ² On initial review, the court notes, without deciding, that it appears the AEDPA statute of limitations expires on or around May 11, 2022.

1 490, 491 (9th Cir. 1990) (collecting cases). A response is warranted in the instant
2 case.

3 This court now turns to Bacharach's motion for the appointment of
4 counsel. (ECF No. 1-2.) There is no constitutional right to appointed counsel for
5 a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555
6 (1987); *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v.*
7 *Florida*, 549 U.S. 327, 336–37 (2007)). An indigent petitioner may request
8 appointed counsel to pursue that relief. 18 U.S.C. § 3006A(a)(2)(B). The decision
9 to appoint counsel is generally discretionary. *Id.* (authorizing appointed counsel
10 when “the interests of justice so require”). However, counsel must be appointed
11 if the complexities of the case are such that denial of counsel would amount to
12 a denial of due process, and where the petitioner is a person of such limited
13 education as to be incapable of fairly presenting his claims. *LaMere v. Risley*,
14 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United States*, 623 F.2d 54, 61 (9th
15 Cir. 1980).

16 Following review of the Petition and the motion for appointment of counsel,
17 the court will provisionally appoint the Federal Public Defender to represent
18 Bacharach. The court finds that appointment of counsel is in the interests of
19 justice given, among other things, Bacharach's lengthy aggregate sentence.

20 **III. CONCLUSION**

21 It is therefore ordered that the clerk file the Petition (ECF No. 1-1) and the
22 motion for appointment of counsel (ECF No. 1-2).
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1 It is further ordered that the clerk add Aaron Ford, Attorney General of the
2 State of Nevada, as counsel for respondents, electronically serve respondents'
3 counsel a copy of the Petition, electronically provide respondents' counsel a copy
4 of this order, and electronically provide respondents' counsel copies of all items
5 previously filed in this case by regenerating the Notices of Electronic Filing.
6 Respondents' counsel must enter a notice of appearance within 21 days of entry
7 of this order, but no further response will be required until further order.

8 It is further ordered that the motion for appointment of counsel (ECF No.
9 1-2) is granted.

10 It is further ordered that the clerk shall electronically serve the Federal
11 Public Defender a copy of this order and the Petition (ECF No. 1-1). The Federal
12 Public Defender is provisionally appointed as counsel and will have 30 days to
13 (1) undertake direct representation of Bacharach by filing a notice of appearance
14 or (2) indicate the office's inability to represent Bacharach in these proceedings.
15 If the Federal Public Defender is unable to represent Bacharach, the court will
16 appoint alternate counsel. Appointed counsel will represent Bacharach in all
17 federal proceedings related to this matter, including any appeals or certiorari
18 proceedings, unless allowed to withdraw. A deadline for the filing of an amended
19 petition and/or seeking other relief will be set after counsel has entered an
20 appearance. The court anticipates a deadline of approximately 90 days from
21 entry of the formal order of appointment.

22 It is further ordered that any deadline established and/or any extension
23 thereof will not signify any implied finding of a basis for tolling during the time

1 period established. Bacharach remains responsible for calculating the running
2 of the federal limitation period and timely presenting claims. That is, by setting
3 a deadline to amend the petition and/or by granting any extension thereof, the
4 court makes no finding or representation that the Petition, any amendments
5 thereto, and/or any claims contained therein are not subject to dismissal as
6 untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

7 It is further ordered that the clerk is directed to send a copy of this order
8 to Bacharach and the CJA Coordinator for this division.

9 Dated: THIS 5th Day of May, 2022



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11 ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE
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